

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:
Katerina L.

Claimant,

OAH No. L 2005070961

And

FRANK D. LANTERMAN
REGIONAL CENTER.

Respondent.

DECISION

This matter came on regularly for hearing before Christine C. McCall, Administrative Law Judge, Office of Administrative Hearings, on February 15, April 21, and November 21, 2006, in Los Angeles, California.

Katerina L. (Claimant) was represented by her father, Robert L.¹ Marc Baca, Appeals Coordinator, represented Frank D. Lanterman Regional Center (Service Agency).

Oral and documentary evidence were received at the hearing, and the matter was submitted for decision.

ISSUE

Should Service Agency continue to fund gymnastics training at My Gym and swim instruction for Claimant?

¹ In the interest of Claimant's privacy, initials are substituted for the surnames of Claimant and her family members.

FACTUAL FINDINGS

Background

1. Claimant is a nine-year-old Service Agency consumer with cerebral palsy with right hemiparesis (paralysis affecting the right side of the body). Claimant has motor limitations when using the right side of her body. She has difficulty performing most tasks with her right hand and uses her left to initiate most activities. She tends to fall. Claimant's motor challenges have limited her ability to play and interact with other children, which limitations have adversely impacted the development of social skills. She has speech difficulties which have also limited her social skills. Claimant lives at home with her parents. Her father is a certified special education instructor and provides her with an education at home.

2. The family has been able to provide speech therapy through private insurance.

3. Claimant receives services from Service Agency pursuant to the Lanterman Developmental Disabilities Services Act (Lanterman Act), Welfare and Institutions Code, section 4500, et seq.² There is no dispute that Claimant is eligible for services. The dispute in this proceeding pertains to the nature and extent of services to be provided.

4. Services are provided to Service Agency's consumers pursuant to an Individual Program Plan (IPP). (Sections 4500.5, subd.(d); 4512, subd.(b); and 4646.5, subd. (a) (4). The IPP sets forth the consumer's individual needs, as determined by assessments conducted by qualified individuals, with the participation of the consumer and family, and provides specific time-limited objectives and goals. (Sections 4646, subd. (b) and 4646.5, subd. (a).

5. In 2001, Service Agency agreed to fund aquatic therapy, music therapy, and My Gym, to help Claimant meet her developmental needs, particularly in light of her motor and socialization challenges. The IPP did not contain a specific time or funding limitation for these services. In 2002, Service Agency denied funding for swimming and gymnastics on the grounds that the My Gym program constituted physical therapy, an educational service within the funding obligation of the local school district. Claimant's father filed a fair hearing request and, after hearing and decision in 2003, Service Agency

² All statutory references are to California Welfare and Institutions Code unless otherwise specified.

was ordered to continue the

funding for both swimming and gymnastics for an additional six months, followed by a re-evaluation considering Claimant's needs at the end of that period.

Claimant's Current Funding Request

6. On April 8, 2005, Service Agency met with Claimant's parents for the purpose of completing a new IPP. Service Agency agreed to continue to fund music therapy, swim therapy and gymnastics instruction at My Gym through August, 2005, but denied continued funding for Claimant's swim lessons and gymnastics.³ For that reason, Claimant's father refused to sign the IPP. He filed a fair hearing request on July 13, 2005, and subsequently executed a waiver of the time set by law for the holding of a fair hearing and the issuance of a decision. There is no dispute that jurisdiction for this hearing is established.

7. Service Agency's reasons for denying funding for Claimant to continue with swim classes and instruction in gymnastics at My Gym were set forth in a letter dated July 28, 2005, to Claimant's father. Service Agency's letter stated that (1) swimming is not the proper service to address Claimant's developmental disability; (2) swim classes are not a specialized service; (3) the My Gym program is not a suitable substitute for physical therapy services that establish measureable objectives and utilize certified and licensed practitioners; and (4) that California Children Services, County of Los Angeles, Department of Health Services, and the school district have the legal responsibility to provide services to Claimant which address her physical condition. Service Agency further recommended low cost gymnastics and swim activities in the community to Claimant.

8. On July 12, 2005, physical therapist Nora T. Liu, at California Children Services, Physical Therapy Unit, assessed Claimant and reported that swimming and gymnastics are appropriate activities that could be expected to benefit Claimant's fitness and physical well-being, particularly in areas of cardiovascular health, muscle strength and endurance, and balance/coordination skills. In September, 2005, Claimant's physician, Claire Fuller, M.D., at Southern California Permanente Medical Group, Pediatrics Department, requested that Service Agency continue Claimant's funding for swimming and gym for medical, neurological and muscular benefits. On September 30, 2005, William Weiser, M.D., at Kaiser Permanente Bellflower Medical Center, Department of Orthopedics, following his assessment of Claimant, reported that swimming is a "terrific service for this child that can do nothing but add some value to her life and also assist her physically."

9. On August 2, 2005, Vanessa Deniston, Claimant's swim instructor,

³ The IPP was amended in August, 2005, to extend the funding for music therapy through January, 2006.

wrote to Service Agency that Claimant had made significant progress in her swim skills, and in her confidence and persistence.

10. The My Gym program incorporates music, dance, puppets, relays, games, special rides, gymnastics, sports, and other original activities. It is designed to provide a fun environment in which children can gain strength, balance, coordination, fine and gross motor proficiency, agility, flexibility, self-esteem, and social skills. Its programs include children with, as well as those without, disabilities. Claimant currently attends My Gym one-hour per week. Claimant enjoys the program and is excited about participating. She engages in appropriate interaction with instructors and participants. My Gym has improved Claimant's self-confidence and self-esteem and enabled Claimant's interaction with non-disabled peers.

11. According to Service Agency, recreational programs, unlike therapy, address children's needs for interaction with other children and enjoyment. They are not conducted by licensed professional providers, are not peer reviewed, and do not formulate measurable objectives or means of measuring progress toward goals.

12. Claimant's father testified to the progress and benefits realized by Claimant as a result of the gymnastics and swim services, particularly with respect to balance, coordination and range of motion. While Claimant continues to make progress consistent with her IPP, she needs additional improvement. Further, Claimant's father cited the value and benefit to Claimant of continuity in the programs and instructors in the services she receives.

13. Service Agency did not offer persuasive evidence to support the grounds on which it denied continued funding of swim and gymnastics instruction, as cited in Service Agency's letter to Claimant. Instead, Service Agency cited a policy, "Social – Recreation Activities Funding Guidelines," adopted by Service Agency on February 25, 2004, that activities such as swimming and gymnastics are the responsibility of the parent.

14. Service agency did not offer any evidence that the established needs of Claimant, as determined by the most recent IPP and those previous, as well as the 2003 Decision following fair hearing, have changed or resolved. Service Agency offered no evidence that the My Gym program and swim classes were no longer appropriate or effective to meet Claimant's needs, or that either service has become unnecessary in light of Claimant's progress or participation in other services

15. Service Agency did not offer any evidence that the generic community programs it recommended to Claimant are of equivalent content and mode to those she has been attending, nor that those alternative programs would be as effective at addressing Claimant's established needs as her current classes have been and continue to be.

16. The My Gym program is uniquely appropriate for Claimant. It addresses both motor and social skills deficits. As an added benefit, the emphasis on music, one of Claimant's strengths, facilitates skill-acquisition.

LEGAL CONCLUSIONS

1. In enacting the Lanterman Act, Welfare and Institutions Code section 4500 et seq., the Legislature recognized the State's obligation to provide services and supports for its residents with developmental disabilities. (Section 4501.) It directed the establishment of a network of regional centers to provide for localized access to these services and supports. (Section 4620 et seq.) It also designated the IPP as the chief vehicle for regional centers and families to discuss individual needs and the specific services and supports to meet those needs. (Sections 4646, 4646.5, 4647, and 4648.) Regional center creation and employment of the IPP process are intended to afford family choice as well as to ensure cost-effective delivery of services and supports. (Section 4646.)

2. Where, as here, the parties cannot agree on the terms and conditions of the IPP, a Fair Hearing decision may establish such terms. (See section 4710.5, subd.(a).)

3. The services to be provided to any consumer must be individually suited to meet the unique needs of the individual client in question, and, within the bounds of the law, each client's particular needs must be met. (See, e.g., sections 4500.5, subd. (d), 4646, subd. (a), and 4648, subd. (a) (1) and (a) (2).) Priority is given to maximizing the client's participation in the community. (Sections 4646.5, subd. (2), and 4648, subd. (a) (1).)

4. The regional centers must provide services and supports that allow the consumer to integrate "into the mainstream life of the community" and to "approximate the pattern of everyday living available to people without disabilities of the same age." (Section 4501. See also, section 4648, subd. (a) (1).) Section 4512, subdivision (b), defines "services and supports for persons with developmental disabilities" in part as follows:

[S]pecialized services and supports or special adaptations of generic services and supports directed toward the alleviation of a developmental disability or toward the social, personal, physical, or economic habilitation or rehabilitation of an individual with a developmental disability, or toward the achievement and maintenance of independent, productive, normal lives.

5. While it is true that parents should provide recreation for their children,

that does not preclude recreational and social services under the Lanterman Act where the consumer's disability makes inaccessible ordinary recreational opportunities. Section 4512, subdivision (b), specifically approves recreation activities as appropriate services and supports. Neither the Department of Developmental Services nor a regional center can enact general policies that prevent or insulate it from meeting the individual needs of a given consumer. (*Association of Retarded Citizens v. Department of Developmental Services* (1985) 38 Cal. 3d 384, 390-393.)

6. The Courts have recognized that the Lanterman Act requires focus on individual needs and on services and supports designed to meet specific needs. *Williams v. Macomber* (1990) 225 Cal.App.3d 225, 232-233. Such individualized focus is necessary because consumer needs and service effectiveness vary from person to person.

7. In this case, Service Agency, with Claimant's parents' concurrence in the IPP process, determined that swimming classes and instruction provided by My Gym were appropriate to meet Claimant's individual needs, as set forth in Factual Findings 5, 8, 9, 10, 12 and 16. Both services have been effective in addressing Claimant's motor and social deficits, and have enhanced her confidence and self-esteem. Gymnastics, in particular, has enhanced Claimant's abilities and opportunities to interact with non-disabled peers.

8. As set forth in Factual Findings 14 and 15, the evidence did not establish that either swim instruction or gymnastics instruction has ceased to be appropriate and necessary to address Claimant's established needs.

9. Service Agency contended that My Gym is a recreational and/or educational program and therefore the responsibility of other funding sources. However, the program incorporates more than recreational and educational goals, as it addresses Claimant's social skills and needs as well.

10. As set forth in Factual Finding 15, the evidence did not establish that alternative sources of swimming and gymnastics instruction and participation, as proposed to Claimant's father by Service Agency, would be equally effective or adequate to meet Claimant's established needs. Service Agency, therefore, shall continue to fund the present swim and gymnastics programs in which Claimant participates for at least one year from the effective date of this Decision.

ORDER

1. Claimant's appeal is sustained.

2. Service Agency shall continue to fund the swim and gymnastics instruction which Claimant receives pursuant to the previous IPP for at least one year from the effective date of this Decision. Service Agency may consider the availability of equivalent community resources and Claimant's progress during this period in its decision on reauthorization of the programs at the end of this period.

Dated: January 19, 2007

Christine C. McCall
Administrative Law Judge
Office of Administrative Hearings

NOTICE

This is the final administrative decision in this matter and both parties are bound by this Decision. Either party may appeal this Decision to a court of competent jurisdiction within 90 days.